IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

FRIDAY, THE 22ND JUNE 2007 / 1ST ASHADHA 1929

Crl.L.P..No. 170 of 2007()

CC.509/2003 of J.M.F.C.,KOLENCHERRY

PETITIONER/COMPLAINANT

A.R.SASIKUMAR, AGED 52 YEARS,
S/O. RAMAN, EXECUTIVE DIRECTOR,
M/S. KAVERI PET AND POLYFORMS PVT. LTD.,
PERINGOLE, KOLENCHERY, ERNAKULAM DIST-683 211.
(THE COMPANY WAS PREVIOUSLY REPRESENTED THROUGH
IT'S GENERAL MANAGER, MR.SREEKUMAR KRISHNAN.)

BY ADV. SRI.C.N.PRABHAKARAN
SRI.C.R.VINOD KUMAR

RESPONDENTS: ACCUSED & STATE:

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1. B.K.NAIR,
MANAGING DIRECTOR, PLANT:VI/210 A,
(MADAKKATHARA P.O., OPP. K.S.B.E. SUB STATION),
MANNUTHI, THRISSUR-680 651.

2. B.K.NAIR,
MANAGING DIRECTOR, N.M.MINERALS INDIA PVT. LTD.,
CORPORATE OFFICE, 726, 1ST FLOOR, 100 FEET ROAD,
INDIRANAGAR, BANGALORE-560 038.

3. STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY P.P.SRI.C.M.KAMMAPPU FOR R3

THIS CRIMINAL LEAVE PETITION HAVING BEEN FINALLY HEARD ON 22/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K. Thankappan, J.

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Crl.L.P. No. 170 of 2007

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Dated this the 22nd day of June, 2007

O R D E R

This is a petition to special leave to appeal filed by the complainant in C.C.No.509/2003 on the file of the Judicial Magistrate of the First Class , Kolenchery. The impugned order would show that the petitioner did not turn up to give evidence in spite of 10 consecutive specific postings for his evidence. In a decision of the Apex Court reported in Associated Cements Co. Ltd. V. Keshwanand (1998(1) KLT 179 (S.C.) the Apex Court held that when the court notices that complainant was absent on a particular day the court must consider whether personal attendance of the complainant was essential on that day for the progress of the case and also whether the situation do not justify the case being adjourned to another date due to any other reason. It is also held that if the situation do not justify the case being adjourned, the court was free to dismiss the complaint and acquit the accused. In the case in hand it is seen that the presence of the petitioner is necessary and the petitioner did not turn up to give evidence in spite of 10 consecutive specific postings of the case for his evidence.

2. In the above circumstances, this Court is of the view that the discretion vested with the court has been exercised judicially and fairly.

Hence, the impugned order requires no interference by this Court. Accordingly, leave is rejected.

K. Thankappan,
Judge.

mn

It is relelvant to note that only because of the absence of the appellant, the 1st rspondent is dragged to this Court. Hence, it is only proper for this Court to allow a reasonable costs to the 1st respondent. Therefore, the appellant is directed to deposit before the court below an amount of Rs.2,000/- on or before the date of posting of the case. If the amount is deposited, the 1st respondent is permitted to withdraw the same.

K. Thankappan,J.

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Crl.A.349/2003

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Judgment
29-3-2007

2. Considering the entire facts and circumstances of the case, this Court is of the view that the impugned judgment requires any interference by this Court. Hence, leave to appeal is rejected.

K. Thankappan,
Judge.

mn.

K.Thankappan,J.

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Crl.l.P.No. /200

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ORDER
-6-2007